IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.REF.No. 11 of 2007()

SC.850/2000 of II ADDL. DISTRICT COURT, TRIVANDRUM

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ON THE REPORT OF THE SESSIONS JUDGE, THIRUVANANTHAPURAM

RESPONDENTS:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

Crl.Ref.No.11 of 2007

Dated this the 8th day of August, 2007

ORDER

This Criminal reference is registered on the basis of a letter received from the learned Sessions Judge, Thiruvananthapuram. The learned Sessions Judge, Thiruvananthapuram has in the letter of reference reported to the Court an inadvertent error committed by the then Sessions Judge in having recalled a Sessions Case from one additional court to another ignoring and overlooking the stipulation that powers unde rSection 409(2) Cr.P.C cannot be invoked when the trial has already commenced.

2. Sessions Case No.850 of 2000 was pending before Additional Sessions Court (Adhoc-II)Thiruvananthapuram. PW1 was examined and PW2 was examined in part. Exts.P1 & P1(a) had been marked also. That is a prosecution for offences punishable, inter alia, under Section 307 I.P.C. At that stage, it was realised that there were 74 accused persons and many witnesses had to be examined. Identification of 74 accused persons in the court of the Additional Sessions Court(Adhoc-II), Thiruvananthapuram was found to be difficult and impossible. It was hence that the Judge concerned made a request to the learned Sessions Judge. Finding the request to be

absolutely reasonable, the learned Sessions Judge invoking the powers under Section 409(1) Cr.P.C withdrew the case from the Additional Sessions Court (Adhoc-II), Thiruvananthapuram and made it over to the second Additional Sessions Judge, Thiruvananthapuram. When the matter reached the second Additional Sessions Judge,the said Judge found the order to be not in conformity with the provisions of Section409(2) Cr.P.C. That was brought to the notice of the learned Sessions Judge. That prompted the learned Sessions Judge to make the reference in question.

3. The course adopted by the learned Sessions Judge initially is certainly not correct. However, I am satisfied that the said error/inadequacy can be cured and corrected by issuing an appropriate direction under Section 407 Cr.P.C and/or 482 Cr.P.C transferring the case and directing the learned Second Additional Sessions Judge, Thiruvananthapuram to continue with the trial and dispose of SC.No.850/2000 on merits and in accordance with law. This Crl.Reference is answered accordingly. The second additional Sessions Judge is directed to continue with the trial and dispose of the case according to law.

(R.BASANT, JUDGE)

rtr/-